

REMARKS

In response to the Office Action dated April 29, 2005, claims 13-17 have been amended and new claims 25 and 26 have been added. Reexamination and reconsideration of the claims as requested is respectfully requested.

On page 3 of the Office Action, claims 16 and 17 are rejected under 35 U.S.C. § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections. Claims 16 and 17 have been amended. It is believed that all claims comply with 35 U.S.C. § 112.

On page 4 of the Office Action, claims 13 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hahn, et al. (U.S. 6,230,029) in view of Vonlanthen (U.S. 2002/0164042). The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections.

The undersigned wishes to thank the examiner for the interview conducted on 20 July 2005. In that interview it was stated that the Hahn and Vonlanthen references might not meet claim 13. Consequently, it is believed that these references do not present a bar, under 35 USC sec 102 or 103.

The Examiner had draw attention to reference WO 01/375524 (hereinafter Weinans). This reference has two priority claims, only one of which *may* be prior to the application date of this application is the Provisional application 60/164 877 filed 12 November 1999. This document differs from the published PCT document and therefore should only be used as the basis for a possible assertion of prior art (no admission of whether it is indeed prior art is made).

In that document (hereafter "the Provisional document"), reference is made to the programmability of buttons 9 and 10 and that they may be controlled by a mechanical switch, but there is no disclosure of how the orientation of the earhook will instruct the switch to change switch orientations.

The claims (such as claim 13) as now presented recite that the switch orientation is changed *when* said earhook is switched from right to left ear usage. The Provisional

document fails to teach this important invention and leaves the reader without any clue as this solution.

Of course, a system which automatically detects the earhook orientation is vastly superior to one which must be manually switched as the limited disclosure of the Provisional document provides. Similarly the Hahn and Vonlanthen patents fail to provide the basis for a combination which reaches this invention.

The remaining claims further define this concept with specific structures or in case of new claim 26, means plus function recitations, which are likewise lacking from all of the cited references.

CONCLUSION

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. The amendments clarify the patentable invention without adding new subject matter. Applicants respectfully request favorable reconsideration and early allowance of all pending claims.

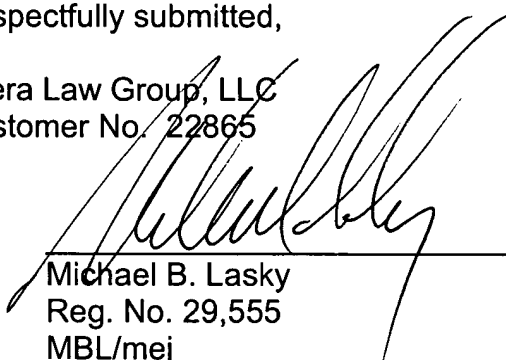
If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicants' attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,

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